SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 667

SAMUEL F. RATHBUN, AS EXECUTOR OF THE ESTATE OF WILLIAM E. HUMPHREY, DECEASED,

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42650

SAMUEL F. RATHBUN, as Executor of the Estate of WILLIAM E. HUMPHREY, Deceased,

v.

THE UNITED STATES

STATEMENT OF FACTS AND CERTIFICATE

Messrs. Ralstone R. Irvine, William J. Donovan, and Henry H. Bond appeared for the plaintiff.

Messrs. George C. Sweeney, James W. Morris and Paul A. Sweeney appeared for the defendant.

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, and Judge Whaley.

STATEMENT OF FACTS

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following materials facts, taken from plaintiff's petition filed April 28, 1934:

(1) The decedent, William E. Humphrey, died on February 14, 1934, a citizen of the United States and of Seattle, Washington, and temporarily resident at 2400 Sixteenth Street, Northwest, City of Washington, District of Columbia, leaving a Last Will and Testament naming Samuel F. Rathbun, of Seattle, Washington, as executor. The said Last Will and Testament was duly admitted to probate by the [fol. 2] Superior Court of the State of Washington for the County of King, on March 20, 1934. Letters testamentary were granted on that day to the said Samuel F. Rathbun, executor, the plaintiff herein. The said plaintiff is still acting as such executor and the said Letters are in full force and effect at the time of filing this suit. An authenticated copy of the record of the appointment of the plaintiff as such executor is filed herewith.

(2) On January 26, 1925, the decedent, William E. Humphrey, was nominated by the President of the United States as a Federal Trade Commissioner for a term expiring September 25, 1931, to fill a vacancy on the Federal Trade Commission. Such nomination was confirmed by the United States Senate, as signified by its action on February 23, 1925. Pursuant to such nomination and confirmation, the President issued to the decedent his written commission appointing him a Federal Trade Commissioner for a term of seven years ending September 25, 1931. The decedent received and accepted such commission. On February 25, 1925, he took the oath of a Federal Trade Commissioner, and thereupon entered upon his duties of his office and continued in the satisfactory performance of such duties.

(3) On June 30, 1931, the decedent again was appointed and commissioned by the President, during the recess of the Senate, as a Federal Trade Commissioner for a term ex-
[fol. 3] piring September 25, 1938, to serve during the pleasure of the President for the time being and until the end of the next session of the Senate and no longer. The decedent received and accepted such commission. On September 24, 1931, he took the oath of a Federal Trade Commissioner, and on September 26, 1931, entered upon the duties of his office and thereafter continued in the satisfactory performance of such duties.

(4) On December 10, 1931, the decedent again was nominated by the President as a member of the Federal Trade Commission for a term of seven years ending September 25, 1938. On January 27, 1932, such nomination and appointment of the decedent as a member of the Federal Trade Commission by the President was confirmed by the United States Senate, as signified by its action on that date in accordance with section 1 of the Federal Trade Commission Act (38 Stat. 717, Sec. 1). In pursuance of such nomination and confirmation, the President of the United States, on January 27, 1932, issued to the decedent his written commission appointing him a member of the Federal Trade Commission for a term of seven years expiring September 25, 1938.

The said written commission provides as follows:

Herbert Hoover,

President of the United States of America

To all who shall see these presents Greeting:

Know Ye, that reposing special trust and confidence in the *Integrity and Ability of William E. Humphrey, of Washington,* I have nominated, and, by and with the advice [fol. 4] and consent of the Senate, do appoint him *a Federal Trade Commissioner for a term expiring September 25, 1938,* and do authorize and empower him to execute and fulfill the duties of that Office according to law, and to have and to hold the said Office, with all the *powers, privileges and emoluments,* thereunto of right appertaining, unto him the said *William E. Humphrey, subject to the conditions prescribed by law.*

In testimony whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

Done at the City of Washington this *twenty-seventh* day of *January,* in the year of our Lord one thousand nine hundred and *thirty-two,* and of the Independence of the United States of America the one hundred and *fifty-sixth.*

(Signed) Herbert Hoover.

By the President:

Henry L. Stimson, Secretary of State. (Seal.)

(5) The decedent received and accepted the said commission as a member of the Federal Trade Commission. On February 5, 1932, he took the required oath of office as such member, and thereupon entered upon the duties of his office, and at all times thereafter and until prevented from so doing, as hereinafter stated, continued in the satisfactory performance of such duties.

(6) On or about July 19, 1933, the decedent sent a letter to the President of the United States stating that information had come to him that the President was about to ask for his resignation; that he did not know the reason for such request; that he had been in public service for the greater part of forty years and was not aware of any act or thing

discreditable or disloyal in his record; and that he asked [fol. 5] for a personal interview with the President regarding this matter.

(7) In response to this letter, the decedent, on or about July 29, 1933, received from the President of the United States the following letter:

The White House, Washington

July 25, 1933.

MY DEAR COMMISSIONER:

In reply to your letter of last week, I regret that the present demands on my time make it impossible at the moment to grant your request for a personal interview.

Without any reflection at all upon you personally, or upon the service you have rendered in your present capacity, I find it necessary to ask for your resignation as a member of the Federal Trade Commission. I do this because I feel that the aims and purposes of the Administration with respect to the work of the Commission can be carried out most effectively with personnel of my own selection.

May I take this opportunity to tell you that at the earnest request of Senator Dill, I have been withholding this action for some time but have now reached a definite decision to proceed along the lines I have in mind.

I congratulate you upon your long and active service.

Sincerely yours, (Signed) Franklin D. Roosevelt.

Hon. William E. Humphrey,
2400 Sixteenth Street,
Washington, D. C.

(8) On or about August 1, 1933, the decedent replied to the above letter, dated July 25, 1933, and stated that as he had been long out of the practice of his profession and had lost all of his connections therewith, he asked time to consult his friends in regard to his future actions. The letter did not state or imply that the decedent tendered his resignation as a Federal Trade Commissioner.

[fol. 6] (9) In spite of the fact that the decedent was denied a hearing and that he did not tender his resignation,

the President of the United States on August 4, 1933, sent the following telegram to the decedent:

Hyde Park, N. Y., August 4, 1933, 11:52 a. m.

Hon. Wm. E. Humphrey, Federal Trade Commission, Washington, D. C.

I have your letter and I fully appreciate your desire to have a little time to make arrangements. Therefore I am accepting your resignation but not to take effect until August fifteenth. Please acknowledge receipt.

Franklin D. Roosevelt.

(10) In response to this telegram, the decedent, on August 11, 1933, sent to the President of the United States a letter stating that:

In acknowledging your telegram of August fourth, I thank you for the courtesy and consideration shown. You say, "I am accepting your resignation." In this you are in error, as I have not tendered my resignation as a member of the Federal Trade Commission, and cannot do so. If any document purporting to be my resignation has been presented to you, it was without my authority, consent or knowledge.

As all of my requests for a personal interview have been denied, I feel that it is a duty I owe the public and myself to briefly state why I cannot comply with your request.

The letter then stated that since the Federal Trade Commission Act provided the grounds for removing a Commissioner, a compliance with the President's request in the public mind would indicate he resigned to avoid removal for cause; that the President acknowledged that his request was without reflection upon the decedent personally or upon [fol. 7] his official service, but only so that the work of the Commission "can be carried out more effectively with the personnel of my own selection"; that Congress intended the Federal Trade Commission should be an independent semi-judicial body at all times, the members of which would be independent of the will of the President and would be subject to removal by the President only for the causes stated in the statute; and that since the President did not question the way in which the decedent had conducted his office of a Federal Trade Commissioner, he declined the re-

quest of the President to tender his resignation for purely political reasons because to do so would violate the statute and constitute consent to a policy that would lessen the value of the Federal Trade Commission and all independent bodies.

(11) On August 31, 1933, the President sent the following letter to the decedent:

Hyde Park, New York, August 31, 1933.

The White House, Washington

MY DEAR COMMISSIONER HUMPHREY:

I am sure that I do not need to tell you that I would not wish to hurt you in any way if it can possibly be avoided, and that is why I still hope that you will be willing to let me have your resignation as a member of the Federal Trade Commission.

You will, I know, realize that I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission, and, frankly, I think it is best for the people of this country that I should have a full confidence.

I have, as you know, delayed presenting this matter for many weeks. I am leaving today to return to Washington [fol. 8] by water, and I shall not get there until next Tuesday morning. I feel that, for your sake and for mine, it would be much better if you could see this point of view and let me have your resignation on any ground you may care to place it, when I return.

Very sincerely yours, (Signed) Franklin D. Roosevelt.

Honorable William E. Humphrey, Federal Trade Commission, Washington, D. C.

(12) In response to this letter the decedent, on September 11, 1933, sent a letter to the President stating that he knew of none of his official acts which indicated that the minds of the President and the decedent did not "go along together"; that this was the first time he had information that any of his views on either the policies or administration of the Federal Trade Commission Act differed from those of the President; that the Commission had for the last four years acted in harmony on matters of policy and

administration; that if the President had heard anything otherwise regarding his acts as a Commissioner or regarding his attitude as to the policies or administration of the Federal Trade Commission Act is [it] was misleading and untrue; that he had always performed his official duties as required by the statute; and that he again requested a hearing to demonstrate that his official acts do not in any way show "our minds do not go along together" or that there was any reason why the President should not have his full confidence.

(13) On September 27, 1933, the decedent sent the following letter to the President of the United States:

[fol. 9] Federal Trade Commission, Washington

September 27, 1933.

William E. Humphrey, Commissioner.

My dear Mr. President:

It is my understanding that you desire me to consider the question as to whether it would not be best for the public good, in view of your feelings towards me, to resign regardless of any legal question involved in the matter.

Misunderstanding is entirely the cause of your attitude towards me, but as you have refused to permit me to give you the facts, of course it is impossible for you to know the truth and it is futile to discuss this proposition further.

Referring to your wish, as I have stated above, I beg to suggest that by reason of the wide publicity given to the controversy the situation has been greatly changed. I want you to know that I did not give out a word of this publicity, and tried to prevent it. This publicity clearly shows that if I leave the Commission, at once the matter will become a party issue. The comments that I have seen in the press, regardless of party affiliation, universally condemned anything that would tend toward this result. The worst possible thing that could happen to the Commission, short of abolishing it, would be to make it a partisan body. If this is done, every time a confirmation for the appointment of a Commissioner comes up, or an appropriation is to be made, or any matter in connection with the Commission is to be considered, the Commission would be attacked,

condemned and misrepresented, regardless of what the truth might be. To make the Commission a political body would be in letter and in spirit a violation and disregard of the statute creating it, and would be contrary to the hopes and aims of all parties who joined in passing the Federal Trade Commission Act.

My resignation, after this wide publicity, would be, in my opinion a great injury to the Commission and to the public.

Very truly yours, (Signed) W. E. Humphrey.

The President, White House.

(14) In response to this letter of September 27, 1933, the [fol. 10] President sent the following letter to the decedent:

October 7, 1933.

The White House, Washington

MY DEAR COMMISSIONER HUMPHREY:

I am in receipt of your letter of September twenty-seventh.

Effective as of this date you are hereby removed from the office of Commissioner of the Federal Trade Commission.

Sincerely yours, (Signed) Franklin D. Roosevelt.

Hon. William E. Humphrey,
Commissioner,
Federal Trade Commission,
Washington, D. C.

(15) On October 7, 1933, the President notified the Federal Trade Commission that he had removed the decedent from the office of a member of the Federal Trade Commission.

(16) On October 9, 1933, the decedent sent the Federal Trade Commission the following letter:

October 9, 1933.

To the Federal Trade Commission:

GENTLEMEN:

You have probably received a copy of the communication issued by the President, purporting to be an order removing me from office as a Member of the Federal Trade Commission.

I refuse to recognize such order as valid, or as being within the President's rightful powers. I am convinced that the order is without warrant of law and is ineffectual. I am, therefore, notifying you that I am still a Member of the Federal Trade Commission and am ready and willing to exercise the powers and functions of my said office, and to participate in all the deliberations and official actions of the Commission.

[fol. 11] Should the Commission decide to deny my said rights, then I ask that such action be made of record, and a statement of the reasons for such actions be made. If the Commission shall decide the matter in my favor, I shall continue to perform the duties of my said office.

Respectfully submitted, (Signed) W. E. Humphrey.

(17) On October 9, 1933, the Federal Trade Commission replied to this letter by sending the decedent a copy of the entry it made that day on its minutes, which entry set forth the letter it received that day from the decedent (set forth in paragraph 16 hereof), and the letter to the decedent from the President (set forth in paragraph 14 hereof). The entry then stated that the Federal Trade Commission recognized the validity of said Executive Order of the President removing the decedent and that the Commission declined further to recognize the decedent as a member of the Federal Trade Commission.

(18) On October 9, 1933, the decedent wrote the following letter to the Disbursing Officer of the Federal Trade Commission:

October 9, 1933.

Mr. Rudolph B. Schwickardi,
Disbursing Officer,
Federal Trade Commission.

DEAR SIR:

I have reason to believe that the President has sent to the Federal Trade Commission a communication purporting to be an order removing me as a Member of the Commission.

No order made by the President purporting to remove me has any warrant in law and is ineffectual in law or in fact, to terminate my said office. I am, therefore, notifying you that I am still a Member of the Federal Trade

Commission and am lawfully entitled to the emoluments [fol. 12] of my office, and that I demand that pay checks be issued regularly in payment of my salary as such officer.

Very truly yours, (Signed) William E. Humphrey.

(19) On or about October 15, 1933, the decedent received a check from the Disbursing Clerk of the Federal Trade Commission in the amount of $165.27 as his salary as a Federal Trade Commissioner for the period from and including October 1 to and including October 7, 1933. The decedent, on October 17, 1933, sent a letter to the said Disbursing Clerk acknowledging receipt of the check in the amount of $165.27, and notifying the Disbursing Clerk that he demanded the payment of the balance of his salary for the month of October at the regular payment date, which would be October 31, 1933.

(20) On October 27, 1933, George C. Mathews took the oath of a member of the Federal Trade Commission to fill the vacancy created by the removal of the decedent, and said George C. Mathews entered upon the duties of a member of the Federal Trade Commission for a term expiring September 25, 1938, during the pleasure of the President and until the end of the next session of the United States Senate and no longer, thereby exercising the powers and privileges, and receiving the emoluments of the office of a member of the Federal Trade Commission claimed by decedent.

[fol. 13] (21) On October 27, 1933, the decedent sent the following letter to George C. Mathews notifying him that the decedent claimed that he was still a member of the Federal Trade Commission, and claimed the emoluments of that office to the expiration of his present term:

October 27, 1933.

Honorable George C. Mathews,
Federal Trade Commission,
Washington, D. C.

Dear Sir:

You are hereby notified that your appointment as Federal Trade Commissioner is invalid, because there was no vacancy to which you could be appointed, and you are notified that I am still a member of the Federal Trade Commission,

filling the term for which you are supposed to be appointed, and that I claim and shall claim the emoluments of the said office to the expiration of my present term.

Very truly yours, (Signed) W. E. Humphrey.

(22) On November 2, 1933, the decedent sent letters to the Federal Trade Commission, to the Secretary of the Federal Trade Commission, to the Chief of Accounts and Personnel of the Federal Trade Commission, and to the Disbursing Clerk of the Federal Trade Commission, all of which letters are identical and one of which reads as follows:

November 2, 1933.

To the: Federal Trade Commission, Otis B. Johnson, Secretary of the Federal Trade Commission; Andrew N. Ross, Chief of Accounts and Personnel; Rudolph B. Schwickardi, Disbursing Clerk.

[fol. 14] I hereby notify you and each of you that I am a member of the Federal Trade Commission and that the order made by the President of the United States purporting to remove me from my said office was and is without warrant of law and void and is not effective to terminate the term of my said office.

That the action of the Federal Trade Commission heretofore taken in refusing to recognize me as Commissioner and in refusing to permit me to perform my said duties as a member of the Federal Trade Commission is without legal effect and void.

That I am at all times ready, willing and able to perform the duties of my said office.

I, therefore, hereby demand of you and each of you that you take the necessary and proper action to cause to be paid to me at this time, the balance in full of my salary as such Commissioner for the month of October, 1933, and also that such necessary and proper action be taken by you and each of you at the proper times until the end of my official term as Commissioner on September 25, 1938, to pay to me in full my several monthly salaries as such member of the Federal Trade Commission.

Very truly yours, (Signed) W. E. Humphrey.

(23) The decedent, on November 28, 1933, sent letters to the Federal Trade Commission, to the Secretary of the Commission, to the Chief of Accounts and Personnel of the

Commission and to the Disbursing Clerk of the Commission identical to the letter set forth in paragraph 22 hereof, except that he demanded his salary as Commissioner for the month of November, 1933.

On December 14, 1933, the decedent sent similar letters to the same persons demanding his salary for the month of December, 1933.

(24) The services of the decedent as a member of the Federal Trade Commission, at all times while in possession of and exercising the duties of the said office, were satisfactorily and properly performed. At no time were any charges of any kind presented against him by the President [fol. 15] of the United States or the United States Senate or otherwise, nor was the question of his removal from said office submitted to the Senate for action thereon, nor was any action taken by the Senate with reference to the attempted removal of the decedent as a member of the Federal Trade Commission. The decedent was not removed from his office as aforesaid on account of any inefficiency, neglect of duty, or malfeasance in office. The decedent alleged that there was no valid reason for the action of the President in removing him from his office. The decedent was never granted a hearing as to the reasons for his removal from his office although he frequently requested a hearing.

(25) On January 4, 1934, the United States Senate received a list of Executive nominations, including that of George C. Mathews, of Wisconsin, to be Federal Trade Commissioner for the term ending September 25, 1938. On January 19, 1934, the nomination of the said George C. Mathews was reported favorably to the Senate and ordered to be placed on the calendar. On January 31, 1934, the Senate confirmed the nomination of George C. Mathews to be a Federal Trade Commissioner.

(26) The petition alleges that "the attempted removal of the decedent by the President of the United States from his office of Federal Trade Commissioner was illegal and void, and did not constitute a removal of decedent from [fol. 16] said office, nor lawfully deprive him of nor affect his right to the powers, privileges and emoluments thereof, nor his right to perform or discharge the functions of said office."

(27) At all times on and after October 7, 1933, until his death on February 14, 1934, the decedent was without employment in any other capacity, and was ready and willing to perform the duties of said office, and constantly during all of said time held himself in readiness for that purpose.

(28) The removal of the decedent by the President was not consented to or acquiesced in at any time by the decedent, who ever objected to and denied the authority and legality of such action of the President in attempting to remove him from his office, and of the Federal Trade Commission in refusing to permit him to exercise the duties of his office, and of the Chief Clerk of Accounts and Personnel and the Disbursing Clerk of the Federal Trade Commission in refusing to pay to him the salary to which he was entitled as a Federal Trade Commissioner.

(29) No part of the emoluments of said office has been paid to the decedent or the plaintiff, or anyone acting, serving or pretending to act as the agent of either of them, for the period from and including October 8, 1933, to the date of decedent's death on February 14, 1934.

[fol. 17] (30) Under and by virtue of section 2 of the Federal Trade Commission Act (38 Stat. 717, Sec. 2), the decedent, Humphrey, was entitled as a member of the Federal Trade Commission to a salary at the rate of ten thousand dollars ($10,000.00) a year, payable in equal monthly installments "in the same manner as the salaries of the judges of the courts of the United States" (except that for the period from April 1, 1933, to January 31, 1934, inclusive, the salary was to be at the rate of eight thousand five hundred dollars ($8,500.00) a year and for the period from February 1, 1934, to February 14, 1934, inclusive, the salary was to be at the rate of nine thousand dollars ($9,000.00) a year, in accordance with the provisions of the Act of March 20, 1933, Public No. 2, Title II, Section 2, as amended by the Independent Offices Appropriation Act, 1935, enacted March 28, 1934, and in accordance with Executive Order No. 6085, promulgated March 28, 1933, and Executive Order No. 6188, promulgated July 3, 1933, and Executive Order No. 6553, promulgated January 9, 1934). The salary by law directed to be paid to the decedent as a member of the Federal Trade Commission was paid to

him uninterruptedly each month from February 25, 1925, to and including October 7, 1933, since which date he was not paid any part of his salary.

(31) Such salary of a member of the Federal Trade Commission for the period from and including October 8, [fol. 18] 1933, to and including February 14, 1934, amounts in the aggregate to three thousand forty-three dollars and six cents ($3,043.06), no part of which has been paid to the decedent or plaintiff and all of which plaintiff claims is due him from the United States, and although such salary has been frequently demanded payment has been refused.

(32) This action is based upon sections 1 and 2 of the Federal Trade Commission Act, approved September 26, 1914 (38 Stat. 717. Chapter 311) which provide in part as follows:

"* * * That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. * * *"

"Sec. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. * * *"

(33) No other action, suit, or process by the plaintiff or assignee of him is pending for or in respect of the plain-

[fol. 19] tiff's claim against any person acting or professing to act, mediately or immediately, under the authority of the United States; no person other than the plaintiff is the owner of the said claim or interest therein; no assignment or transfer of said claim or any part thereof or interest therein has been made; no other action than as aforesaid has been had on this claim in Congress or in any of the Departments. The amount herein claimed from the United States is not subject to any credits or offsets; the decedent and plaintiff have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States. The plaintiff is a citizen of the United States.

Wherefore, the plaintiff prays judgment against the United States in the sum of $3,043.06, together with interest thereon from the date such salary was due and payable, together with the costs and disbursements of this action.

To this petition the defendant has filed a demurrer, on the ground that the petition does not state a cause of action against the United States.

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the [fol. 20] record before it the court finds it necessary for a proper disposition of the case that certain questions of law should be determined. They are as follows:

QUESTIONS CERTIFIED

1. Do the provisions of section 1 of the Federal Trade Commission Act, stating that "any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office", restrict or limit the power of the President to remove a commissioner except upon one or more of the causes named?

If the foregoing question is answered in the affirmative, then—

2. If the power of the President to remove a commissioner is restricted or limited as shown by the foregoing interrogatory and the answer made thereto, is such a re-

striction or limitation valid under the Constitution of the United States?

Fenton W. Booth, Chief Justice. Wm. R. Green, Judge. Benjamin H. Littleton, Judge. T. S. Williams, Judge. Richard S. Whaley, Judge.

[fol. 21] I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of Samuel F. Rathbun, as Executor of the Estate of William E. Humphrey, deceased, v. The United States, No. 42650, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 25th day of January, A. D., 1935.

Willard L. Hart, Chief Clerk, Court of Claims of the United States. (Seal.)

Endorsed on cover: File No. 39,295. Court of Claims. Term No. 667. Samuel F. Rathbun, as Executor of the Estate of William E. Humphrey, Deceased, vs. The United States. Certificate. Filed January 26, 1935. File No. 667, O. T., 1934.